

(2019) 09 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 3540 Of 2019, CM No. 7353 Of 2019

Bishamber Dass Gupta

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 27-09-2019

Acts Referred:

Jammu And Kashmir Civil Service Regulations, 1956 — Article 242

Citation : (2019) 09 J&K CK 0007

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : Anil Khajuria, K.D.S.Kotwal, Vishal Sharma

Final Decision : Disposed Of

Judgement

Tashi Rabstan, J

1. Notice to the respondents. Mr. K.D.S.Kotwal, Dy.AG waives notice on behalf of respondent Nos. 1 to 4 and Mr. Vishal Sharma, ASGI for respondent No.5.

2. The petitioner through the medium of instant petition is seeking direction to the respondents to consider his case for the settlement of pension as per the last pay drawn by him at the time of superannuation i.e. on 30.06.2018; with a further direction to pay other post retiral benefits of gratuity, leave encashment salary, commutation of pension claims as per last pay drawn that too in light of judgment passed by the Apex Court in case of State of Punjab V Rafiq Masih and others passed in Civil Appeal No.11527/2014 on 18.12.2014, judgment passed in case of Syed Abdul Qadir and others v. State of Bihar and others; 2009 AIR(SCW) 1871, case titled Union of India V. Jagdish Pandey, Civil Appeal No. 365 of 2007 decided on 08.07.2010, LPASW No. 189 of 2006 decided on 26.09.2007 as well as the judgment passed by this Court in SWP No. 1128 of 2010, SWP No.1129 of 2010, SWP No.1130 of 2010, SWP No. 1362 of 2006 read with Article 242 of J&K CSR for meeting the ends of justice.

3. Learned counsel for the petitioner contends that the respondents are under

legal obligation to settle the pension case of the petitioner as per the last pay drawn under Article 242 of CSR governing the subject and as per the mandate the average emoluments in respect of a government servant are to be taken into consideration on the basis of last ten months pay and pension and other benefits are to be fixed accordingly. He further contends that in similar cases the respondents have considered, but, ignored the same in case of the petitioner. Hence this petition on the grounds taken in it.

4. The petitioner while placing reliance on Article 242 of CSR Volume-1, submits that he has already represented in this regard to respondent No.5, but, all in vain. Learned counsel for the petitioner submits that the petitioner would feel satisfied if respondent No.5 is called upon to take a decision on his representation in light of the Article 242 of CSR Volume 1 and in view of other similar cases, which have already been settled by respondent No.5 within certain timeframe to which learned counsel appearing on behalf of the respondents are not averse to this proposition, except for their assertions that the respondents be directed to do the needful in terms of the law and the rules governing the field. Their statements are taken on record.

5. In view of the submissions made by the learned counsel for the parties and in the facts of the case, the writ petition is disposed of by permitting the petitioner to file a detailed representation supported by relevant documents including the judgment, if any, passed in similar cases and implemented by respondent No.5 within a period of two weeks from today. On receipt of such representation, the same shall be considered and decided by the respondents, particularly, respondent No.5 within a period of six weeks thereafter.

6. With the aforesaid directions, the writ petition is disposed of accordingly, along with connected CM(s), if any.